

STATE OF MICHIGAN
COURT OF APPEALS

RONALD WADE SANMIGUEL,

Plaintiff-Appellant,

v

JOSEPH JAMES SHINGOLA,

Defendant-Appellee,

and

CITY OF ROCKFORD, ROCKFORD CITY
POLICE DEPARTMENT, and THOMAS
VANDENBOSCH,

Defendants.

UNPUBLISHED

October 8, 2002

No. 232948

Kent Circuit Court

LC No. 99-002133-NI

Before: Fitzgerald, P.J., and Holbrook, Jr. and Cavanagh, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting summary disposition pursuant to MCR 2.116(C)(10) in favor of defendant Joseph James Shingola in this negligence action. We affirm.

On June 30, 1997, plaintiff pleaded no contest to felonious assault. The assault conviction stemmed from an incident that occurred on March 3, 1997, and involved Officer Thomas VandenBosch and defendant Shingola. Plaintiff was charged with intent to do great bodily harm to both VandenBosch and Shingola.

This same March 4, 1997, incident serves as the basis for the present civil action brought by plaintiff against the City of Rockford, Rockford City Police Department, VandenBosch and Shingola. Plaintiff sought to recover damages for injuries sustained when VandenBosch shot him in the chest during the March 4, 1997, incident.

In his complaint, plaintiff alleged one count of negligence with regard to Shingola. Specifically, plaintiff alleged that:

47. The Defendant, Joseph James Shingola, at or around 10:30 p.m. on March 4, 1997, and immediately prior thereto, did fail and breach all such duties with respect to the Plaintiff, in the following, but not by way of limitation, particulars:

a. failing to take such actions and measures as a reasonable and prudent person would have under the same and similar circumstances;

b. yelling and shouting false and misleading statements, including the statement that the Plaintiff was armed and/or had a knife, which was completely false, and known to be false by Defendant Shingola when he made the statement;

c. acting negligently and carelessly in causing an incident which through his direct actions escalated and ultimately lead to the shooting by Defendant VandenBosch of the Plaintiff; and

d. in falsely shouting to Defendant VandenBosch that the plaintiff was trying to kill him with a knife, when Defendant Shingola knew or should have known that the information was totally false and would and could lead to a serious escalation of the situation ultimately leading to the gun shot wound that the Plaintiff suffered.

49. As a direct and proximate result of Defendant Shingola's negligence, recklessness, and carelessness, the Plaintiff has sustained personal injuries and damages more fully set forth in paragraph 17 of the Common Allegations.

Plaintiff testified in his deposition that he was a passenger in Shingola's vehicle when Shingola began driving erratically. Shingola then stopped the vehicle on the US 131 freeway in Grand Rapids and tried to push plaintiff into traffic. Plaintiff indicated that he ran to VandenBosch's vehicle without saying anything, opened the door, and asked for help. VandenBosch then advised plaintiff that he was a police officer and promptly shot plaintiff after Shingola falsely warned that plaintiff had a knife.

Shingola's version of the events is significantly different than plaintiff's version. Shingola testified in his deposition that he was driving his vehicle northbound on US 131 south of I-196. Plaintiff, his cousin, was his front-seat passenger. Without warning, plaintiff opened the passenger side door and said, "I'm out of here." Shingola directed plaintiff to shut the door, and after doing so plaintiff "put his head down and started talking, mumbling." Plaintiff thereafter raised his head up, grabbed the steering wheel, and forced the vehicle across three lanes of traffic. The vehicle stopped in the lane nearest the median in an "awkward position" and was partially blocking the ramp onto I-196.

Plaintiff told Shingola that Shingola had to die, that Shingola was evil, and that he was going to kill Shingola. Plaintiff attacked Shingola with a yellow-handled knife and Shingola fled the vehicle with plaintiff in pursuit. The two men struggled outside the vehicle with plaintiff punching Shingola and grabbing his jacket while trying to swing him out into traffic. Shingola noticed that a car had stopped behind his vehicle and ran over to request help. Shingola informed the driver that plaintiff had a knife and was trying to kill him. The driver then advised plaintiff that he was a police officer, and Shingola noticed that the driver had his cell phone in

his hand. The driver was Officer VandenBosch of the Rockford Police department. VandenBosch was in plain clothes in his own personal vehicle.

At that point, Shingola ran from the driver's side of VandenBosch's vehicle to the passenger side. He observed plaintiff run up to the driver's side door of VandenBosch's vehicle. After VandenBosch identified himself as a police officer, plaintiff opened the car door and began kicking VandenBosch. Plaintiff then entered the vehicle, crouching over VandenBosch, who was lying back across the front seats repeatedly warning plaintiff that he would shoot. Shingola also saw a metallic object in plaintiff's hand that he believed was a knife. Police found no knife at the scene.

Immediately after the shooting, Shingola began to experience asthma symptoms and left the scene in his vehicle to obtain some asthma medicine from his home. He found the knives inside his vehicle and drove down to the police station and turned them in.

VandenBosch testified that he was on his way to work, in his personal clothing and personal vehicle, when he was prevented from proceeding on the I-196 on ramp by Shingola's vehicle and was forced to stop his vehicle. From his vantage point behind Shingola's vehicle, VandenBosch observed plaintiff beating Shingola and trying to push Shingola into traffic. It appeared to him that plaintiff was trying to kill Shingola. Shingola approached VandenBosch's vehicle and advised VandenBosch that plaintiff had a knife and was trying to kill him. Shingola also advised VandenBosch to "watch out." After this discussion, Shingola went to the passenger side of VandenBosch's vehicle and plaintiff went to the driver's door and opened it. Plaintiff began kicking VandenBosch, and VandenBosch laid back across the front seats to avoid plaintiff and began to kick back. Throughout the struggle, VandenBosch repeatedly commanded plaintiff to stop and advised plaintiff that he was a police officer.

At one point, VandenBosch told plaintiff that he would shoot, but plaintiff did not stop. Plaintiff lunged at VandenBosch, striking him in the leg. Aware that Shingola advised that plaintiff had a knife, and feeling pain and believing he had been stabbed, VandenBosch shot plaintiff.

Shingola moved for summary disposition, arguing that regardless of the differing versions of the events, Shingola owed no duty to plaintiff and, in the alternative, that Shingola's alleged negligence was not the proximate cause of plaintiff's injuries and alleged damages.¹ Following a hearing, the trial court ruled that Shingola did not have an actionable duty to plaintiff and, in the alternative, that VandenBosch shot plaintiff as a result of plaintiff's own conduct and that the shooting was not proximately caused by Shingola's conduct.

Plaintiff argues that the trial court erred in determining that Shingola did not owe a duty to plaintiff and that Shingola's statements were not the proximate cause of plaintiff's injuries. The existence of a duty owed by a defendant to the plaintiff is a necessary element in every negligence case. *Papadimas v Mykonos Lounge*, 176 Mich App 40, 45; 436 NW2d 280 (1989). There can be no actionable negligence if there is no legal duty. *Etter v Michigan Bell Telephone*

¹ The remaining defendants subsequently moved for and were granted summary disposition.

Co, 179 Mich App 551, 555; 446 NW2d 500 (1989). If there is no duty, summary disposition is proper. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001).

In this case, plaintiff alleged that Shingola owed him a duty of care because it was foreseeable that plaintiff would be harmed by defendant's false statement that plaintiff had a knife. Whether a duty exists to protect a person from reasonably foreseeable harm is a question of law for the court to decide. *Otero v Warnick*, 241 Mich App 143, 147; 614 NW2d 177 (2000). Duty is essentially a question of whether the relationship between the actor and the injured person gives rise to any legal obligation on the actor's part for the benefit of the injured person. *Moning v Alfonso*, 400 Mich 425, 438-439; 254 NW2d 759 (1977). Proximate cause encompasses a number of distinct problems including the limits of liability for foreseeable consequences. *Id.* at 439. In *Moning*, the Court stated:

The questions of duty and proximate cause are inter-related because the question whether there is the requisite relationship, giving rise to a duty, and the question whether the cause is so significant and important to be regarded a proximate cause both depend on foreseeability – whether it is foreseeable that the actor's conduct may create a risk of harm to the victim, and whether the result of that conduct and intervening causes were foreseeable. [*Moning, supra* at 438-439.]

We conclude that Shingola did not owe plaintiff a duty and tort liability should not be imposed on Shingola. It was not plainly foreseeable that plaintiff would be shot because of Shingola's statements. It is undisputed that at the time Shingola made the statement that neither plaintiff nor Shingola knew that VandenBosch was a police officer. It is not plainly foreseeable that an ordinary citizen would be carrying a handgun and would pull the handgun and shoot based solely on Shingola's statement.

Additionally, there is not a demonstrably close connection between Shingola's statements and plaintiff's injuries. It is plain that the primary agent of the shooting was VandenBosch. It is also plain that VandenBosch witnessed at least part of the altercation between plaintiff and Shingola and that VandenBosch believed that plaintiff was trying to kill Shingola. VandenBosch's decision to shoot plaintiff was not made when Shingola made the statements but, rather, after plaintiff assaulted VandenBosch and continued to assault him after being advised that VandenBosch was a police officer and that he would shoot if plaintiff did not desist. VandenBosch never testified that he would not have shot plaintiff under these same circumstances had Shingola not made the statements. Although it is impossible to completely eliminate Shingola's contribution to this conjunction of causes, plainly his statement does not loom large. It was not reasonably foreseeable that as a result of Shingola's statement to VandenBosch that VandenBosch would shoot plaintiff; too many other factors intervene and bear on the result. Thus, Shingola owed no duty to plaintiff to refrain from making the statements and the statements are not legally germane to the resultant injuries.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Mark J. Cavanagh